

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VICTOR POPELKA,

Plaintiff,

Case No. 1:20-cv-1066

v.

EMR EXPRESS, INC.,

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

Introduction

1. This is an action for unpaid minimum wages brought pursuant to the federal Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, for unpaid final wages brought pursuant to the Illinois Wage Payment and Collection Act, 820 ILCS 115/5, and for breach of contract.

Jurisdiction and Venue

2. This Court has jurisdiction because plaintiff has asserted a claim arising under federal law pursuant to the federal Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.* ("FLSA"). Accordingly, this Court has jurisdiction over the subject matter of this action under 29 U.S.C. section 216(b) and 28 U.S.C. section 1331. The Court has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. section 1337.
3. Venue is proper in this District because the unlawful employment practices described herein were committed in the Northern District of Illinois and all parties

are residents of the Northern District of Illinois. Venue in the Northern District of Illinois is proper pursuant to 28 U.S.C. section 1331(b).

Parties

4. Plaintiff Victor Popelka is an Illinois resident who resides in the Northern District of Illinois and was employed by defendant EMR Express, Inc. as a truck driver from approximately February, 2019 to approximately July 20, 2019.
5. Defendant EMR Express, Inc. is an Illinois corporation with headquarters and facilities in the Northern District of Illinois.

Facts

6. Plaintiff Victor Popelka was an employee of defendant EMR Express, Inc. Defendant owned the trucks that plaintiff was assigned to drive, dictated the time and location that plaintiff was to pick up loads, dictated the locations that plaintiff was to deliver loads, and reported plaintiff's employment income, as an employee, on an Internal Revenue Service W-2 form.
7. Plaintiff was an individual employee of defendant engaged in interstate commerce as required by 29 U.S.C. section 206.
8. At all times relevant hereto, defendant was an employer of plaintiff Victor Popelka within the meaning of Section 3(d) of the FLSA, 29 U.S.C. section 203(d). Defendant has been an enterprise engaged in interstate commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. section 203(s)(1).
9. Defendant failed to pay plaintiff Victor Popelka for his final two weeks of work, pay due equal to approximately \$2,600.00. By failing to pay for that work, defendant failed to pay plaintiff the minimum wage required by the Fair Labor

Standards Act and violated the provisions of the Wage Payment and Collection Act.

10. In addition, defendant failed to pay plaintiff a one thousand dollar (\$1,000.00) signing bonus that was promised to him by defendant when he began his employment.
11. At all times relevant hereto, the Illinois Wage Payment and Collection Act, 820 ILCS 115/14, has provided that an employer that fails to pay final wages to an employee shall owe, in addition to those wages, an amount equal to two percent (2%) of those wages for every month they are unpaid.

Count I – Violation of the FLSA

12. Plaintiff re-alleges and incorporates by reference paragraphs 1-11 above as paragraphs 1-11 of this Count I.
13. By failing to pay plaintiff the minimum wage required by the FLSA, defendant violated the provisions of the FLSA, 29 U.S.C. section 206(a).
14. Defendant's failure to pay plaintiff the minimum wage was a willful violation of the FLSA.

Count II – Violation of the Illinois Wage Payment and Collection Act

15. Plaintiff re-alleges and incorporates by reference paragraphs 1-14 as paragraphs 1-14 of this Count II.
16. By failing to pay the final wages due to plaintiff, defendant has violated and is violating the provisions of the Illinois Wage Payment and Collection Act, 820 ILCS 115/5.

Count III – Breach of Contract

17. Plaintiff re-alleges and incorporates by reference paragraphs 1-16 as paragraphs 1-16 of this Count III.
18. Defendant's promise to pay plaintiff for his work, and its promise to pay him a \$1,000.00 signing bonus, and plaintiff's acceptance of these terms, constituted a contract between the parties.
19. By failing to pay the final wages due to plaintiff and failing to pay plaintiff the signing bonus promised to him defendant breached this contract.

WHEREFORE, plaintiff Victor Popelka prays for judgment against defendants EMR Express, Inc. for damages consisting of:

- a. Unpaid minimum wages required by the FLSA;
- b. An equal amount owed as liquidated damages;
- c. Unpaid final wages in an amount of approximately \$3,600;
- d. Two percent (2%) of those unpaid final wages for each month that they have gone unpaid;
- e. Pre-judgment and post-judgment interest;
- f. Reasonable attorney's fees and costs;
- g. Such other relief as the Court shall find just.

Plaintiffs demand a trial by jury.

By: /s/ Paul Strauss

Attorney for plaintiff Victor Popelka

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